

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID J. CARPENTER,

Petitioner,

v.

KEVIN CHAPPELL, Acting Warden
of California State Prison at San
Quentin,

Respondent.

NO. C 00-3706 MMC

ORDER GRANTING LEAVE TO FILE
MOTION FOR RECONSIDERATION**DEATH PENALTY CASE**

Pursuant to the Civil Local Rules of this district, respondent has moved for leave to file a motion for reconsideration of this Court's Order of March 3, 2005, denying in part respondent's motion to dismiss. In support of the instant motion, respondent cites to Civil Local Rule 7-9(b)(2), which, as one of the grounds for reconsideration, requires the moving party to demonstrate "a change of law occurring after the time of [the challenged] order."


Respondent has made the necessary showing. As respondent correctly points out, this Court, in its 2005 Order, relied on *Bennett v. Mueller*, 322 F. 3d 573 (9th Cir. 2003), and *Morales v. Calderon*, 85 F. 3d 1387 (9th Cir. 1996), to support its holding that California's timeliness bar was not adequate to foreclose federal review of claims found to be untimely in state court. More recently, however, the United States Supreme Court has held that

1 California's timeliness bar is adequate, and thus may serve to procedurally bar claims in
2 federal court that were held untimely in state court. *See Walker v. Martin*, 131 S.Ct. 1120,
3 1126-1130 (2011).

4 Accordingly, and for good cause shown, respondent's motion for leave to file a
5 motion for reconsideration is hereby GRANTED. Within ninety days of the date of this
6 Order, the parties shall meet and confer, and set a briefing schedule for any motion for
7 reconsideration.

8 **IT IS SO ORDERED.**

9 DATED: November 13, 2013

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11 MAXINE M. CHESNEY
12 UNITED STATES DISTRICT JUDGE
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